

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ENERGY WEST, INC.) CASE NO. 1:09-cv-00591
v.)
Plaintiff,) JUDGE CHRISTOPHER A. BOYKO
v.)
UNITED STATES POWER FUND, LP, et al.) MOTION OF LORING BIOENERGY, LLC
Defendants.) TO STAY THE PROCEEDINGS PENDING
) A RULING ON THE MOTION TO
) DISMISS FOR LACK OF IN PERSONAM
) JURISDICTION AND IMPROPER VENUE
)

Pursuant to Rule 7(b)(1) of the Federal Rules of Civil Procedure and this Court's inherent authority, putative Defendant Loring BioEnergy, LLC ("Loring") specially appears and moves the Court to stay further proceedings on Plaintiff's Motion for Temporary Restraining Order until after the Court determines whether it has *in personam* jurisdiction over Loring and whether venue is proper with respect to Loring. The grounds in support of this Motion are set forth in the attached Brief in Support.

Respectfully submitted,

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Pro Hac Vice Motions Pending

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IN THE UNITED STATES DISTRICT COURT
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ENERGY WEST, INC.) CASE NO. 1:09-cv-00591
Plaintiff,)
v.) JUDGE CHRISTOPHER A. BOYKO
UNITED STATES POWER FUND, LP, et al.)
Defendants.)
) BRIEF IN SUPPORT OF MOTION OF
) LORING BIOENERGY, LLC TO STAY
) THE PROCEEDINGS PENDING
) CONSIDERATION OF LORING'S
) MOTION TO DISMISS

I. PRELIMINARY STATEMENT

Putative Defendant Loring BioEnergy, LLC (“Loring”) hereby moves this Court to stay any proceedings related to Plaintiff EWI’s Motion for Preliminary Injunction and Temporary Restraining Order, filed on October 26, 2011, until after the Court decides Loring’s pending Motion to Dismiss the Supplemental Complaint. As fully explained in Loring’s pending Motion to Dismiss and supporting materials, EWI’s claims against Loring are subject to dismissal for lack of *in personam* jurisdiction and for improper venue.

This Court has the inherent power to control its own docket and must consider jurisdiction as a threshold issue. In circumstances such as these, it is both logical and practicable for the Court to resolve the jurisdictional and venue questions before proceeding to the merits of any controversy regarding Loring.

II. ARGUMENT

Loring’s request to stay the proceedings on EWI’s motion is grounded in two-well established principles of law. First, every court has an inherent power to exercise its discretion

to manage “the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants.” *Landis v. N. American Co.*, 299 U.S. 248, 254 (1936). A decision to enter a stay falls within the sound discretion of a district court. *Georgia-Pac. Consumer Prods. LP v. Four-U-Packaging, Inc.*, 2010 WL 55973, at *2 (N.D. Ohio Jan. 5, 2010).

Second, and perhaps more importantly, personal jurisdiction is a critical threshold matter to be considered by this Court with respect to Loring before moving forward with EWI’s claims for injunctive relief. *See, e.g., Kroger Co. v. Malease Foods Corp.*, 437 F.3d 506, 510 (6th Cir. 2006) (“[P]ersonal jurisdiction is a threshold determination linked to any subsequent order issued by the court”). Therefore, staying consideration of EWI’s motion is clearly warranted. A decision on the jurisdictional and venue issues would likely terminate the need for this Court to resolve other issues with respect to Loring.

EWI will suffer no prejudice from a stay of proceedings on its pending Motion for Preliminary Injunction and Temporary Restraining Order. A court’s decision to stay a civil proceeding “requires an examination of the specific circumstances, taking into account the competing interests involved.” *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037 (W.D. Mich. 2007). Here, because the critical threshold questions of jurisdiction and venue are so central to the specific circumstances of EWI’s efforts to bring Loring into this ongoing litigation, a stay would permit this Court to swiftly resolve the jurisdictional and venue issues before investing time in any further proceedings. Accordingly, a stay would promote an economical use of time for the Court as well as for the parties. Indeed, in analogous circumstances, this is the course of action which the Court correctly took in Richard M. Osborne & Gas Natural, Inc. v. Michael German, et al., Case No. 1:11-cv-744, U.S.D.C., N.D. Ohio (Boyko, J.) -- staying all proceedings

until the Court resolved an in personam jurisdiction and venue challenge interposed by out-of-state defendants.

III. CONCLUSION

For the foregoing reasons, Loring respectfully requests that this Court grant its Motion to Stay further proceedings on EWI's Motion for Preliminary Injunction and Temporary Restraining Order pending the Court's determination regarding *in personam* jurisdiction and venue.

Respectfully submitted,

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Pro Hac Vice Motions Pending

Attorneys for Defendant
Loring BioEnergy, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2011, a copy of foregoing Motion of Loring Bioenergy, LLC to Stay the Proceedings Pending a Ruling on the Motion to Dismiss for Lack of In Personam Jurisdiction and Improper Venue was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Matthew T. Fitzsimmons
Matthew T. Fitzsimmons

Attorney for
Loring Bioenergy, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2011, a copy of foregoing Motion Loring Bioenergy, LLC to Stay the Proceedings Pending a Ruling on the Motion to Dismiss for Lack of *In Personam* Jurisdiction and Improper Venue was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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